

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 181 of 1985

with

SPECIAL CIVIL APPLICATION No. 235 of 1986

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRA TUBE SUPPLIERS

Versus

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Appearance:

MR RM VIN for Petitioner No. 1

MR BP TANNA with MR NIKHIL S. KARIEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: /07/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The present two Special Civil Applications have been filed under Article 226 of the Constitution of India, whereby the action of the Authorities of the Municipal Corporation of City of Ahmedabad of inspection, detaining and seizure of goods and books of accounts of the two petitioner concerns and thereupon levy and recovery of octroi duty on such goods has been challenged.

#. The petitioners also challenge the constitutional validity of the Octroi Rules and the Standing Orders framed under the Bombay Provincial Municipal Corporations Act, 1949 (herein after in short referred to as `the Act, the Rules and the Standing Orders respectively).

#. The brief facts in the two cases before us leading to the challenge to the alleged coercive recovery of octroi from the petitioner need to be stated.

#. The petitioner, Swastik Steel Suppliers in S.C.A. No. 235 of 1986, is a partnership firm engaged in the business of dealing in iron and steel materials. It is admitted that the firm has maintained a godown in which goods purchased locally and imported from outside the City of Ahmedabad are stored. On 25-5-1984, the Officers of the Octroi Department of the Corporation made a surprise visit to the business premises of the concern and demanded for inspection of books of accounts, ledger and registers regarding sale and purchases for the years Samvat 2037 - 2040. According to the petitioner on the insistence of the Officers, who conducted raid, accounts books and import bills were made available for inspection. The Officers, then, on the spot made a demand of a sum of Rs. 60,000/- as octroi duties on purchases made by the concern. Despite the protest of the petitioner against the seizure of books of accounts, a sum of Rs. 60,000/- was forcibly recovered from the petitioner. After the alleged raid and recovery of the octroi duty in the sum of Rs. 60,000/-, under the so called document, bill-cum-receipt (Annexure A), the petitioner was served with notices dated 29-5-1984 demanding proof of due payment of octroi duty on transactions between the Samvat years 2037 and 2040. The above letter was followed by demand of estimated octroi in the sum of Rs. 1,50,000/-. The petitioner protested against the demand of Rs. 1,50,000/- and demanded

information and basis of such a demand. Request was also made for return of the books of accounts, so that necessary information might be supplied. The petitioner was then served with five requisition notices under Rule 11 of the Octroi Rules for the transactions for different periods of the years 1981-82 and 1983-84. To the above mentioned requisition notices, the petitioner submitted a written reply lodging his protest against the illegal recovery of octroi and his inability to supply the necessary information pursuant to the requisition notices for want of files and books of accounts.

#. The second petitioner in the connected case, S.C.A.No. 181 of 1985, Mahendra Tube Suppliers is also a partnership firm dealing in ERW tubes and other similar articles. The case of this concern is that it maintains two godowns, one outside the limits of Ahmedabad and the other within the limits in its business premises. On 21-12-1984, the members of the staff of the Octroi Department of the Corporation intercepted two hand carts loaded with ERW goods belonging to the petitioner firm. The carriers of the two hand carts failed to pay on demand the octroi duty at the Haldervas Octroi Naka. The petitioner's representative then approached the Octroi Authorities and was willing to pay octroi duty in the sum of Rs. 672/- @ 4% advalorem for 2400 kgs. of material valued at Rs. 16,800/-. It is the case of the petitioner that the amount offered towards octroi duty was not accepted and the goods were illegally detained. The Officers of the Corporation then went for inspection to the godown of the petitioner in Archana Estate, where one Clerk Amrish Parikh of the firm was present. He was unable to give necessary information about the import of goods. The Authorities made a random inspection of the books and bills available and came to a tentative conclusion that out of total goods worth Rs.11.00 lakhs, octroi duty was not paid on goods worth Rs. 9.00 lakhs. The Authorities seized the stock of ERW tubes on a demand of Rs. 80,000/- towards octroi.

#. During the pendency of the Petition, by order made on 22-5-1985 by this Court, the goods seized from the petitioner have been directed to be released on petitioner depositing an amount of Rs.18,000/- within the stated period therein and furnishing a bank guarantee in the sum of Rs. 10,000/-.

#. Learned counsel Shri R.M. Vin appearing for the petitioners in the two cases contended that the action of the authorities in the Octroi Department of the Corporation in making forcible entry in the premises of

the petitioners, seizing their goods and books of accounts and extorting from one of the petitioners a sum of Rs. 60,000/- towards octroi duty are actions ex-facie illegal and unconstitutional. They are, in fact, offences of a criminal trespass and extortion. Learned Counsel made strenuous effort by taking the Court through various provisions of the Act, Rules and the Standing Orders to show that no such power of inspection, seizure and recovery of octroi on the spot could be legally resorted to. It is contended that the provisions in the Octroi Rules and Standing Orders which authorize the members of the staff of the Octroi Department to make entry for inspection of the goods in the business premises, for effecting seizure and demanding octroi and recovering the same forcibly, are powers which are arbitrary. There are no guidelines in the Rules or Standing Orders how the 'Municipal value' of the goods is to be determined on the spot for making a demand of octroi and effecting its recovery. It is submitted that such extraordinary power of seizure and recovery, if conceded to the Authorities of the Corporation without any guidelines and checks, would be a serious inroad on the fundamental rights of the petitioners to carry on their trade and occupation.

#. We have also heard learned counsel Shri Bhaskar P. Tanna appearing for the Corporation, who took us through the entire scheme of the Act, Octroi Rules and the Standing Orders to point out that they provide a complete procedure to levy, demand and recover octroi and to take all necessary steps for such recovery, where the octroi is evaded by the parties by surreptitious or illegal import.

#. In order to consider the merit in the grounds of attack made to the action of the Authorities in conducting a surprise check and demand and recovery of octroi, it is necessary to briefly survey the relevant provisions of the Act, Octroi Rules and the Standing Orders.

Clause (a) of subsection (2) of Section 127 empowers the Corporation to impose octroi as a tax. Section 128 provides the manner of recovering municipal taxes by presenting a bill, by serving a written notice of demand, by distraint and sale of a defaulter's movable and/or immovable property and if necessary, by a suit. In relation to octroi and toll one of the modes of recoveries specified is by the seizure and sale of goods and vehicles. Section 128 with its different clauses including clause (5) in relation to octroi and toll is

quoted for ready reference:-

"128. Manner of recovering municipal taxes.

A municipal tax may be recovered by the following processes in the manner prescribed by rules:-

- (1) by presenting a bill,
- (2) by serving a written notice of demand,
- (3) by distraint and sale of a defaulter's movable property,
- (4) by the attachment and sale of a defaulters, immovable property,
- (5) in the case of octroi and toll, by the seizure and sale of goods and vehicles,
- (6) in the case of property tax by the attachment of rent due in respect of the property.
- (7) by a suit."

Section 387 under Chapter XXIII contains general power of the Commissioner himself or his delegate to enter and make inspection which is found necessary for the purposes of or in pursuance of any provisions of the Act, Rules, by-laws, regulations or standing orders. Section 387(1) which is relevant reads as under:-

"387. Power of entry and inspection.

- (1) The Commissioner may enter into or upon any premises, with or without assistance or workman, which he is empowered by or under the provisions of this Act or the rules to enter or inspect or in order to make any inspection, survey, measurement, valuation or inquiry or to execute any work which is authorised by or under this Act or which it is necessary for any of the purposes, or in pursuance of any of the provisions, of this Act or of any rules, by-laws, regulations or standing orders thereunder to make or execute." (underlining for inviting pointed attention and emphasis)

Section 457(7) empowers the Corporation to frame Rules on other subjects including on assessment and recovery of municipal taxes.

Section 466(1)(A)(a) of the Act empowers the Commissioner to make standing orders on several subjects mentioned in the said Section including for determining how octroi shall be calculated when no reliable evidence is available of the value of the goods imported.

It is an exercise of these powers conferred under Section 457 and 466, the Octroi Rules and the Standing

Orders have been framed, to the relevant provisions of which reference shall herein after be made.

##. Rule 29 given in Appendix IV in Chapter VIII of Taxation Rules under the Act contains power of inspection of articles liable to octroi. Rule 33 provides when octroi is payable. The aforesaid Rules being relevant are quoted hereunder:-

"29. Power to examine articles liable to octroi.

- (1) A person bringing into or receiving from beyond the limits of the City any goods shall, when required by an officer authorized in this behalf by the Commissioner and so far as may be necessary for ascertaining whether octroi is payable on such goods and the amount of tax chargeable, -
 - (a) unload and reload all the goods or such of them as may be required by that officer;
 - (b) permit that officer to inspect, examine, weigh, stamp, seal or otherwise mark for purpose of identification of such goods;
 - (c) permit that officer to inspect and examine any animal or vehicle on or in which such goods are loaded;
 - (d) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to such animal or goods; and
 - (e) make a declaration in writing to that officer regarding the correctness and accuracy of the document shown to him.
- (2) Every person in charge of such vehicle shall make a full and correct declaration of the goods carried in such vehicle.
- (3) If any person bringing into or receiving from beyond the limits of the City any vehicle or package shall refuse on the demand of an officer authorised by the Commissioner in this behalf to permit the officer to inspect the contents of the vehicle or package for the purpose of ascertaining whether it contains anything in respect of which octroi is payable, the officer may cause the vehicle or package to be taken without unnecessary delay before a Magistrate or such officer of the Corporation as the Commissioner appoints in this behalf who shall cause the inspection to be made in his presence.

33. Octroi payable on demand

(1) Octroi shall be payable on demand.

(2) Every person authorised by the Commissioner to demand octroi shall tender to every person on whom the demand is made a bill specifying the goods taxable, the amount claimed, and the rate at which the tax is calculated."

Rule 35 empowers the Commissioner or his delegate to collect octroi. It also needs to be reproduced:-

"35. Collection of octroi and tolls how to be effected.

Octroi and tolls may be collected under the orders of the Commissioner by municipal officers and servants appointed in this behalf or, if the Commissioner thinks fit, may, with the approval of the Standing Committee, be framed by him for any period not exceeding one year at a time or be collected by or under the orders of any person whom the Commissioner, with the approval of the Standing Committee, appoints to be his agent for this purpose."

Rule 49 contains the power for detention or seizure of goods on non-payment of octroi. Subrule (1) of Rule 49 which is relevant is quoted as under:-

"49. Special provisions in regard to nonpayment of octroi or toll.

(1) In the case of non-payment of any octroi or any toll on demand by any person authorised in this behalf by the commissioner such person may seize any goods on which the octroi is chargeable, or any vehicle or animal on which the toll is chargeable or any part of the burden of such vehicle or animal which is in his opinion of sufficient value to satisfy the demand together with the expenses incidental to the seizure, detention and eventual sale, if necessary, of such animal, goods, vehicle, burden or part thereof, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal or thing seized, a list of the property together with a written notice in Form I."

##. Rule 11 is a general provision empowering the Commissioner or any Officer authorised by him in his behalf to demand information and documents by service of

a requisition notice as per Schedule I from any owner or importer of goods, if he has formed an opinion and reason to believe that octroi is payable or has been evaded. Learned counsel for the petitioners has contended that Rule 11 is the only prescribed mode by which requisite information could be demanded from the petitioners and only thereafter the demand could have been raised. It is also necessary, therefore, to reproduce Rule 11, which reads as under:-

"11. If the Commissioner or any other Officer authorised in this behalf is of opinion or has reason to believe that it is necessary in the interest of Municipal Revenue, to issue a requisition notice as per Schedule "I" or in such a form as may be prescribed by the Municipal Commissioner, from time to time, may issue the same asking any owner or importer of goods or any person connected with the import of goods to return it duly filled in and signed by him within 15 days from the date of receipt of the same. The person, who is required by a written notice so to do, shall fill in correct details and submit a true account of the goods imported by him. The Commissioner or the Officer authorised may require of the said person to produce before him any accounts or documents and to furnish any information relating to the import of goods or any other information in connection therewith as may be required, together with the copies or extracts from such documents etc., as appear to him to be necessary. The Octroi duty found due on the information received as per requisition notice or when such information is believed to be incorrect, on such other authentic information as may be obtained, shall, immediately, be paid by the said person on demand. If the amount so demanded is not paid on demand, it shall be recovered, as if it were a tax, by process of recovery as provided in Chapter VIII (Rules of the Schedule appended to Bombay Provincial Municipal Corporations Act LIX of 1949)."

##. The respondent Corporation has also framed Standing Orders in accordance with Section 466(1)(A) of the Act and a few provisions of the same are also required to be examined. Clauses (3) and (4) of Paragraph 2 of the Standing Orders define the words "value of the goods" and "municipal value" respectively as under:-

"2. In these Standing Orders, unless there be

anything repugnant in the subject or context:-

- (1) xx xx xx xx
- (2) xx xx xx xx
- (3) "Value of the goods". Where octroi is charged advalorem shall mean the value of goods made up of the price of the goods as ascertained from the original invoice plus shipping charges, insurance charges, customs duties, excise duties, sales tax, vend fee, freight charges, carriage charges, bank commission and all other incidental charges payable or incurred by the importer till the arrival of the goods at the import naka.
- (4) "Municipal Value" shall mean the value fixed by the Commissioner or by a municipal officer authorised in this behalf from time to time under sub-clause C of the clause A of subsection 1 of section 466 of the Act."
- (5) to (15) xx xx xx"

##. Attention of the Court has been invited by learned counsel for the petitioner to Paragraph 7 of the Standing Orders which provides the procedure for demanding octroi duty at the octroi post by serving a bill and the form for such an import bill has been prescribed in Schedule B of the Standing Orders. The contention advanced on behalf of the petitioner is that import bill in the prescribed form in Schedule B as referred to in Paragraph 7 of the Standing Orders is to be served at the octroi naka and such a bill or demand could not have been raised by entering and searching the premises of the petitioner. Paragraph 7 of the Standing Orders and the prescribed form of import bill in Schedule B as served on the petitioner in S.C.A. No. 235 of 1986 are required to be reproduced:-

Paragraph 7 of the Standing Orders.

- "7.(1) The Naka karkun shall, when goods are brought to his Naka prepare an import bill by ascertaining and noting in the consecutive order of pages in triplicate of his import bill book, particulars as per Schedule 'B'.
- (2) When goods liable to duty Advalorem are imported the naka Karkun shall endorse the original invoice if produced in the form as per Schedule H."

Schedule B as served on the petitioner in SCA 235 of 1986.

"Ahmedabad Municipal Corporation

Octroi Department
Import Bill in respect of 'F' form
Standing Order No. 8(2) and 7(1)
(for Importer)

Resolution No. CSP/OYMC (Gen.) Kh 25 dated 4-9-81

Book No. 2319 Sr. No. 90

Name of the Naka Spot Enquiry.
Name of the importer of goods-Swastik Steel
Suppliers, 8, Vinod Chamber, O/s. Dariapur Gate,
Ahmedabad.
25.5.84 9.34 P.M.

Name of designation of the
person possessing the goods -----
Time

Date of Import.

Marks on goods.	No.of packages	Description of packages	Description of goods	Description of vehicles
Loose	Iron sheets	Spot inquiry		
Weight or Value of goods as quantity of	Rate of per 'F' Form.	Per duty	Amount of	octroi
Rs. 20,00,000	3%	Rs.60,000/-		
Rupees sixty thousand				

I have received
Sd/- Illegible.

Signature of Naka Karkun"

Paragraph 8 of the Standing Orders provides for
procedure for assessment of octroi on the basis of
'market value' or 'municipal value' where original
invoice is either not produced or is found to be
unreliable or incomplete. Paragraph 8(2) of the Standing
Orders relevant for the present purpose also needs
reproduction:-

"8.(1)(a) In order to enable the naka Karkun to
ascertain the value of the goods for the purpose
of assessing octroi, every person who imports
goods into the octroi limits of the Corporation
for consumption, use or sale therein, shall
produce before the Naka Karkun the original
invoice, bill or other document of a like nature,

showing the correct value of such goods and he shall further fill in and deliver to the said Karkun a declaration under his signature in the form prescribed in Schedule 'E'.

- 8.(1)(b) If the contents of the invoice, bill or other document, do not appear to be reliable to the Naka Karkun the value stated therein shall not be accepted and octroi shall be calculated in the manner laid down in Standing Order No. 8(2).
- 8.(2) If the original invoice is not produced at the time of import or if the invoice that is produced and the declaration that is given in pursuance of Standing Order 8(1)(a) above are not deemed reliable by the Naka Karkun or if the invoice or declaration is incomplete, the importer shall make a declaration in form prescribed in Schedule 'F' and declare therein the market value of the goods imported. The Naka Karkun shall calculate and recover the amount of octroi duty on the basis of the declared market value or the Municipal value, whichever is higher, together with all other incidental charges as mentioned in sub-clause 3 of Standing Order 2 and the amount so calculated shall be paid forthwith by the importer to the Naka Karkun. The importer shall produce the original invoice or where the original invoice is not available, reliable evidence as to the value of the goods imported, in the Municipal Octroi Office within 30 days from the date of import or within such reasonable time as may be extended by the Commissioner on the request of the importer looking to the circumstances of each case. If, on production of the invoice or any other evidence in regard to the value of the goods imported, it is found that less than the proper and due amount of octroi is paid, the importer shall pay up the difference of octroi immediately on demand.
- 8.(3) If the importer makes a default in producing within the time stipulated above, the original invoice or where the original invoice is not available reliable evidence in lieu thereof as to the value of the goods imported, the Commissioner may, in his discretion, before taking action for breach of Standing Order No. 8(2) call upon in writing, such importer to do so within a week. A fee of 0.50 paise shall be charged to the importer for each such 'F' form in respect of which such intimation has been issued.
- 8.(4) Where octroi is recovered under clause 2 above, refund shall be admissible on receipt of

application from the importer that the octroi so recovered is in excess of the octroi that would properly be leviable according to the value of the goods as shown in the invoice, provided that the application for refund in the form as may be prescribed by the Commissioner together with the original import bill and original invoice or other document of a like nature is received in the office of the Octroi Superintendent within 30 days from the date of import.

Provided that where an application is not accompanied by such document, the Commissioner may, if he is satisfied that the omission is due to good and sufficient reasons, extend the period upto 3 months from the date of import for submitting the documents."

##. Having thus examined in detail the scheme of the Act, Rules and the Standing Orders for demand, assessment and recovery of octroi, the contentions advanced by the learned counsel on behalf of the petitioners are further required to be considered.

##. The first argument advanced with sufficient force is that there is no provision empowering the Authorities or Officers of the Corporation to enter and search the premises of the petitioners to make a demand of octroi duty and effect on-the-spot recovery. It is submitted that such action of the Authorities of the Corporation was highly arbitrary and violative of petitioners' fundamental right to carry on their trade. The second contention advanced on behalf of the petitioners is that where the Commissioner or his staff as the delegates have reason to believe that on certain goods imported octroi has been evaded, the only course permissible to them in law is to demand information by a requisition notice in accordance with Paragraph 11 of the Standing Orders, and then after proper assessment and hearing of the alleged owner or importer of goods, to make a demand and effect recovery. In this respect, it is contended that on-the-spot recovery of octroi made from the petitioner in S.C.A. No. 235 of 1986 by serving a demand and issuing a receipt in Form F (Annexure A) is, in fact, a procedure to be followed for goods brought at the octroi post. The procedure and Form mentioned in Paragraph 7 of the Standing Orders cannot be resorted to when the goods are found in the premises of the owner or importer. It is submitted that any other interpretation of the provisions of law would amount to conceding a blanket power to the Commissioner and the Authorities of the

Corporation to enter and search anybody's premises and make illegal recoveries only on supposition that octroi has been evaded. Such power would be a serious threat to the fundamental rights of citizens and traders in various goods.

##. Learned counsel Shri Bhaskar P. Tanna assisted by Shri Nikhil S. Kariel has taken pains to take us through the detailed provisions of law on the subject of recovery of octroi. In reply it is submitted that the provisions discussed above fully empower the Authorities of the Corporation, on a reasonable belief that octroi has been evaded, to enter business premises of the importers, in respect of their goods and make a demand of octroi and also recovery octroi duty, even at the business premises. It is submitted that such a power is necessary to prevent evasion of octroi duty and has been expressly conferred by various provisions in the Act, Rules and the Standing Orders. Learned counsel for the Corporation also placed reliance on the following decisions for the purpose of explaining the nature of the provisions and the power of the Corporation Authorities in the matter of demand and recovery of octroi duty:

- (1) GLR Vol. XXXIV(1) 214 Shree Harshidhi Traders, Rajkot v. Rajkot Municipal Corporation.
- (2) GLR Vol. XXXI(1) 432 The Municipal Corporation of the City of Baroda v. Babubhai Himatlal.
- (3) GLR Vol. XXIII(1) 157 State of Gujarat v. Angadia Kantilal Somabhai.
- (4) GLR Vol. XIII 260 G.H.Saiyad v. Sitaben Gopaldas & Anr.

##. We have in detail examined the provisions of the Act, Rules and the Standing Orders concerning demand, levy and collection of octroi duty. We have also considered the contentions advanced by the learned counsel for the parties. In our considered opinion, the arguments advanced on behalf of the petitioners proceed on a legal misconception and in ignorance of various provisions of law quoted above. The power to impose octroi duty includes power to make provisions to prevent evasion. For the above purpose, specific provision has been made in Section 128 to present a bill and recover octroi duty on-the-spot either at the octroi naka or at any other place. Section 387 is a general power conferred on the Commissioner and also his delegates by order of a delegation to enter premises for inspection, if found necessary, for the purposes of the Act or in pursuance of any provisions of the Act, Rules or By-Laws. This enables the Authorities, on a reasonable belief of

evasion, to check the alleged illegal imported goods, may be, stored in the business premises or any other place of the importer. Detailed Rules have been framed like Rule 29 authorising the Officers to detain goods for the purpose of checking evasion of octroi duty. Rule 33 specifically empowers demand of octroi by presenting a bill. Specific power of seizure of goods for non-payment of octroi by presenting a bill. Specific power of seizure of goods for non-payment of octroi is to be found in Rule 49. Such power of inspection, seizure of goods to demand taxes is to be found in various taxing provisions. The Bombay Provincial Municipal Corporations Act was brought into force in the year 1949 and these provisions have worked satisfactorily for such a long period. It cannot be accepted that the provisions containing powers of inspection, search and seizure of goods and making recovery by presenting a bill are provisions which confer any blanket or arbitrary power on the Authorities of the Corporation and make, therefore, a serious inroad into the fundamental rights of the petitioners to carry on their trade and occupation. Such extraordinary powers are necessary to be conferred on the Authorities to prevent and check evasion of octroi and for the purpose of due collection of octroi duty.

##. It was forcefully urged on behalf of the petitioners that where the octroi duty is alleged to have been evaded at the octroi post and the goods have been illegally imported, the only procedure available to the Authorities is to take proceedings for assessment of octroi on goods on which it is evaded by serving a requisition notice on the owner or importer of goods in accordance with Rule 11 and only thereafter a demand can be raised after grant of opportunity to the owner or importer of goods. It is also argued that on-the-spot demand and recovery made from the petitioner in S.C.A. No. 235 of 1986 in Form 'F' (Annexure A) is totally illegal, as the said demand and recovery can be made in accordance with Paragraph 7 of the Standing Orders, only at the Octroi Naka and at no other place. To substantiate the above argument, learned counsel pointed out the various columns filled in the prescribed Form F (Annexure A) under which a sum of Rs. 60,000/- was recovered on-the-spot from the representatives of the petitioner - Swastik Steel Suppliers. We have quoted and examined Rule 11, Standing Order No. 7 and the Form prescribed in Schedule B. It is true that the Form prescribed in Schedule B of Paragraph 7 of the Standing Orders is meant to be utilised by Octroi Authorities at the Octroi Post. There is no separate Form prescribed either in the Rules or the Standing Orders for serving a demand on inspection,

seizure or detention of goods at a place other than the Octroi Naka. On this ground alone it cannot be held that the action of the Authorities of the Corporation was totally unauthorised. As we have mentioned above, under the provisions of the Act and the Rules, ample powers have been conferred on the Corporation Authorities to make inspection of the goods, present a bill, demand octroi duty and make recovery on the basis thereof. If at all there is any defect in the making of demand and recovery on-the-spot of octroi for the goods kept in the premises of the petitioner, it is a defect of form and not of substance. As we have mentioned above, under Section 128, presentation of a bill is one of the modes of demanding and recovery of octroi duty. Specific provisions for making such a demand on-the-spot is to be found also in Rule 33. Rule 35 and 49 are also specific provisions empowering the Authorities to demand octroi duty at the place where the goods on inspection are found to have been liable to payment of octroi duty. In the absence of any specific form in the Standing Orders for making a demand and recovering octroi at the place where goods are found to have been stored on which octroi duty is evaded, the Authorities committed no serious breach of law in resorting to the same form mentioned in Schedule B of Paragraph 7 of the Standing Orders, which is strictly applicable only to the goods intercepted at the Octroi Naka. We also find no merit in the contention that Rule 11 is the only prescribed mode of assessing, demanding and recovering octroi where octroi duty is alleged to have been evaded. In our opinion, Rule 11 is an additional power to requisition information for checking evasion of octroi and assessing and demanding octroi duty. Rule 11 is not the sole repository of all procedure for demanding and recovering octroi duty on goods which were not subjected to octroi at the Octroi Post. Another argument advanced on behalf of the petitioner is that determination of 'municipal value' of the goods as defined in subclause (4) of Paragraph 2 of the Standing Orders is a power arbitrary, being without any guidelines. The said argument also has no merit. Clause (3) of Paragraph 2 of the Standing Orders defines the 'value of the goods' for the purpose of charging octroi being the value of goods ascertainable from the various documents relating to the purchase and supply of the goods including incidental charges. 'Municipal value' has been defined in clause (4) of Paragraph 2 to mean values fixed by the Commissioner or by Authorities in his behalf under subclause (c) of Clause (A) of subsection (1) of Section 466 of the Act. This requirement of law is to fix the values of different goods on the basis of relevant information regarding the

value. The value of imported goods is required to be ascertained from all available reliable sources like its controlled prices, market prices and prices which are known in actual transactions. The fixation of municipal value, therefore, cannot be held to be an arbitrary power. There is inherent guideline contained in definition clause 'value of the goods' in clause (3) of Paragraph 2 of the Standing Orders read with Section 466(1)(A)(c) of the Act. For the purpose of levying octroi where real value of the goods is not ascertainable, either because there are no documents or papers showing the value or the real value is suppressed, 'municipal values' on the basis of available information about the price of goods is required to be maintained and there are sufficient guidelines indicated in the Act and the Rules for the purpose. The last argument, therefore, also fails.

Consequent to the detailed discussion aforesaid, we find no merit in these Petitions and both the Petitions are dismissed. Rules issued in both the matters are discharged.

##. So far as the case of Swastik Steel Suppliers, the petitioner in S.C.A.No.235 of 1986 is concerned, a sum of Rs. 60,000/- has already been recovered from the petitioner with a demand of a sum of total Rs.1,50,000/-. It would be open to the Authorities to serve on the petitioner a separate notice for the purpose and after calling the petitioner for assessment, the Authorities of the Corporation shall proceed in accordance with law.

In the petition of Mahendra Tube Suppliers, i.e., S.C.A. No. 181 of 1985, this Court by an interim order dated 22-2-1985 directed the petitioner to deposit a sum of Rs. 18,000/- and furnish a bank guarantee for the sum of Rs. 10,000/-, being the approximate octroi duty evaded, in the total sum of Rs. 28,000/-. The Petition having been dismissed, it would now be open to the Corporation Authorities to initiate fresh proceedings for assessment and recovery of balance amount of octroi duty. It is directed that after giving notice and opportunity of hearing to the petitioner, the total liability towards octroi for the goods in question be determined and balance amount, if any, be recovered, or if any amount is found to be refundable, the same should be refunded.

In the circumstances, we make no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(K.R. VYAS, J)

[sdevu]